

ISSUE DATE: February 9, 1999

DOCKET NO. P-550/C-97-1576

ORDER FINDING NO VIOLATION, DISMISSING COMPLAINT AND CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Complaint of Redwood County
Telephone Company Against Minnesota Valley
Telephone Company

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PROCEDURAL HISTORY

On October 27, 1997 Redwood County Telephone Company (RCTC or the Complainant) filed a complaint against Minnesota Valley Telephone Company (MVTC) for encroachment and solicitation of customers outside of MVTC's certified service area, in violation of Minn. Stat. §237.16.

On April 9, 1998, the Minnesota Department of Public Service (the Department) filed comments.

On May 26, 1998, the Commission issued an Order directing MVTC to show cause why the Commission should not initiate enforcement and penalty proceedings.

On July 22, 1998, the Department filed supplementary comments.

On August 25, 1998 the Commission sent a letter serving the May 26, 1998 order upon MVTC.

On September 14, 1998, MVTC responded to the show cause order.

On October 14, 1998, the Department filed reply comments.

On November 20, 1998, MVTC responded to Commission staff's information request which had requested documentation of the cost of installing the line from the customer's residence to MVTC's pedestal.

The Commission met on January 26, 1999 to consider this matter.

FINDINGS AND CONCLUSIONS

I. RCTC'S COMPLAINT

Redwood County Telephone Company (RCTC) or the Company) asserted that Minnesota Valley Telephone Company (MVTC) had encroached upon RCTC service territory and solicited RCTC customers (Dennis and Pam Zempel) in violation of Minn. Stat. § 237.16. RCTC asked the Commission to investigate what it viewed as MVTC's violation of state law, issue a cease and desist order against MVTC and order MVTC to disconnect its telephone services to the Zempels and remove the cable that MVTC had installed to provide such service.

II. MVTC'S RESPONSE

In its response, MVTC noted that the customers at issue (the Zempels) own land on both sides of the boundary between MVTC's and RCTC's service areas, with their residential building situated within RCTC's service area approximately 325 feet from the service area boundary. According to MVTC, the Zempels contacted MVTC in the fall of 1997 requesting that MVTC build out a terminal to the Zempels' property on MVTC's side of the exchange boundary. MVTC did so. Then, at their own expense, the Zempels ran their own "service station line" from their residence to MVTC's terminal to establish telephone service with MVTC. MVTC stated that it has served the Zempels in this manner since October 15, 1997.

MVTC argued that consistent with the Commission's prior decisions, Minn. Stat. § 237.16, and Minn. Rules, Part 7810.0100 it was not required to amend its certificate of authority to provide the service in question and was in fact required to provide service to the Zempels. MVTC concluded that the Commission should dismiss RCTC's complaint, asserting that the Zempels' decision to install and connect their own station service line to MVTC's terminal, at their own expense, was an appropriate exercise of consumer choice, which MVTC argued was one of the driving forces behind Minn. Stat. 237.16 as amended in 1995, Minn. Stat. 237.011 (1997) and the federal Telecommunications Act 1996.

III. THE DEPARTMENT'S COMMENTS

In reply to MVTC's response, the Department stated that MVTC had not illegally encroached upon RCTC's exchange or illegally served customers in MVTC's exchange. The Department agreed with MVTC that Commission precedent based on the Callaway case (Docket No. P-507/M-85-673) is to allow a customer that owns a property that lies in two companies' service territories the choice of which telephone company to receive service from, provided that the customer pays for the facilities between the customer's equipment and the selected carrier at an interconnection point that is located on portion of the customer's property served by the said carrier.

IV. COMMISSION ANALYSIS

The Commission finds that RCTC did not build any facility in RCTC's territory and simply allowed the customers (the Zempels) to extend a service line within their own property from their residence, which is located in RCTC's service territory, to MVTC's terminal which was also located on the Zempels' property but on MVTC's side of the exchange boundary. In that regard, this case is similar to one previously addressed by the Commission. See In the Matter of the Request of Callaway Telephone Company to Eliminate Adjacent Exchange Service, Docket No. P-507/M-85-673.

In its October 24, 1986 ORDER AFTER RECONSIDERATION in the Callaway docket, the Commission stated:

The Commission finds that the [FCC's] Heritage case¹ does apply to the present proceeding. In the Heritage case, the FCC held that the customer is entitled to interconnect its telephone equipment with the carrier serving the portion of the customer's property where the interconnection is made. The Commission concludes that Mr. Starkey [the complainant] has the choice of which telephone company to receive service from, based on the location of the point of interconnection chosen by Mr. Starkey, because he owns contiguous property located in both the Callaway and NWB exchanges. [Bracketed material added.]

ORDER at page 3.

In the Commission's Callaway Orders,² the Commission adopted the policy expressed by the FCC in Heritage that a customer owning a property which lies partly in the service territory of Company A and partly in the service territory of Company B is entitled to receive service from the carrier which serves the territory in which the point of interconnection is located, provided the customer pays for the facilities from the customer premises equipment (CPE) to said interconnection point.

The Commission notes that in Callaway and Heritage, as in the present case, the carrier desired by the customer (here MVTC) was willing to provide the service requested. The Commission, therefore, need make no decision (and makes no decision) regarding MVTC's assertion that it would be legally obligated to provide service to the customer if it (MVTC) found it burdensome or otherwise objectionable to do so.

Regarding the alleged illegal solicitation, the record simply contains only RCTC's deductions and

¹ In the Matter of the Petition of Heritage Village Church and Missionary Fellowship, Inc. for Emergency Relief With Respect to PBX Interconnection to Telephone Service of Southern Bell Telephone and Telegraph Company, CC Docket No. 81-184.

² In the Matter of the Request of Callaway Telephone Company to Eliminate Adjacent Exchange Service, Docket No. P-507/M-85-673, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (June 2, 1986) at page 5 and ORDER AFTER RECONSIDERATION (October 24, 1986) at pages 2-3.

assumptions about what it believes MVTC's actions must have been in this regard, assertions which have been denied by MVTC.

V. COMMISSION ACTION

Based on the facts of this case, the Commission finds that MVTC did not encroach upon RCTC's service territory in violation of Minn. Stat. § 237.16. Regarding RCTC's allegation of unfair solicitation, the Commission finds that the record does not substantiate that claim.

Accordingly, the Commission will dismiss the complaint and close the docket.

ORDER

1. The Complaint filed by Redwood County Telephone Company against Minnesota Valley Telephone Company is dismissed.
2. The docket is hereby closed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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